

REMARKS

Applicants appreciate the thorough review of the present application as reflected in the Official Action mailed March 10, 2004. Applicants appreciate the withdrawal of the Section 112 rejections and the previous prior art rejections as well as the withdrawal of the objection to the specification. Applicants will address each of the new issues raised in the March 10, 2004 Official Action below.

Applicants have amended Claims 1, 11 and 21 to clarify that the request is distributed based on a characteristic of the request and if the request is for a connection to the application over the network. Thus, Claims 1, 11 and 21 have been amended to make clear that the request is not distributed solely based on the application the connection request is directed to but also based on a characteristic of the request. Dependent claims 4, 14 and 24 have also been amended to conform to amended Claims 1, 11 and 21.

The IDSs

Applicants appreciate the return of the initialed copies of the previously submitted PTO-1449 forms. Applicants also submit herewith an IDS of additional materials for consideration by the Examiner. Applicants request that the Examiner return an initialed copy of the PTO-1449 form submitted with the accompanying IDS.

The Objection to the Drawings

Figures 1 through 3 are objected to as not labeled as prior art. Applicants have amended Figures 1 through 3 to include the "Prior Art" label. Accordingly, Applicants submit that the objection to the drawings has been overcome.

The Claims Are Not Anticipated

Claims 1-2, 11-12 and 21-22 stand rejected under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 5,341,477 to Pitkin *et al.* (hereinafter "Pitkin"). The cited portions of Pitkin describe a system where the a broker provides a client a recommendation for a server that provides the service requested by the client. The broker selects a server from a "window" of servers that provide the requested service. See Pitkin, col. 3, lines 9-18. The selection of the server is based

on "network policy" developed for a particular network, not based upon a specific characteristic(s) of a client request, other than the application service requested. See Pitkin, col. 2, lines 62-68. Thus, for example, Pitkin states:

When customers set up their network, they therefore establish a network policy to allocate resources for each service. Policy decisions must be cognizant of all of the available factors made prior to implementing the system, i.e., based on the physical constraints of the hardware, the communication lines, the price factor for the product, the usage load, i.e., heavy, medium, light, fast CPUs, slow CPUs and other appropriate factors. A broker implements the network policy when suggesting an appropriate server to maximize the efficiency of the complex network

Pitkin, col. 5, lines 58-68 (emphasis added). Also, the broker of Pitkin does not appear to base its selection of a recommended server based on characteristics of the request other than the requested service. See Pitkin, col. 9, line 64 to col. 10, line 32.

In contrast to the system of Pitkin, Claim 1 recites as follows:

1. (Currently Amended) A method of distributing workload between a plurality of data processing systems in a cluster of data processing systems, wherein each of the plurality of data processing systems is executing an instance of an application which communicates over a network such that a connection request to the application may be distributed to any one of the plurality of data processing systems, the method comprising:
 - defining a subset of the plurality of data processing systems which are to receive connection requests to the application having at least one predefined characteristic;
 - receiving a request for a connection to the application over the network;
 - determining if the received request has a characteristic other than identification of the application corresponding to the at least one predefined characteristic associated with the subset of the plurality of data processing systems; and**
 - distributing the received request to one of the subset of the plurality of data processing systems if the received request is for a connection to the application over the network and has a characteristic corresponding to the at least one predefined characteristic.**

Applicants submit that at least the highlighted portions of Claim 1 are not disclosed or suggested by Pitkin. Corresponding recitations are found in independent Claims 11 and 21.

As recited in Claim 1, a characteristic of the received request other than identification of the application is evaluated to determine if it is associated with a characteristic associated with a subset of the data processing systems that provide the

application. Thus received connection request is evaluated to determine if it has a characteristic **other than identification of the application** corresponding to the characteristic associated with the subset of processing systems and the received request is distributed based on this evaluation. Claim 1 recites that request is distributed to a data processing system in the subset if "the received request is for a connection to the application over the network **and** has a characteristic corresponding to the at least one predefined characteristic." Thus, the request must be **both** for a connection to the application and it must have a characteristic associated with the predefined characteristic of the subset of data processing systems other than merely that the request is for the application provided by the data processing systems.

In rejecting Claim 1, the Official Action cites Pitkin, col. 2, lines 38-41 and 55-57 as disclosing or suggesting determining if the characteristic of the received request and Pitkin col. 9, lines 17-18 as disclosing or suggesting the distribution of the requests based on the characteristic of the request. Official Action, p. 4. However, the cited portion of Pitkin in col. 2 describes responding "to requests from accessing clients concerning which member of that server set is capable of providing the requested service." Pitkin, col. 2, lines 38-41. This portion of Pitkin does not describe evaluating a characteristic of a request as recited in Claim 1 but merely describes determining the service that is requested. Likewise, lines 55-57 of col. 2 of Pitkin merely states that the server makes the determination of whether to accept a request from a client. The cited portion of col. 9 of Pitkin merely states that client requests are evenly distributed across servers based on server capacity. Applicants submit that the cited portions of Pitkin do not describe evaluating a characteristic of a request from a client other than to determine the service requested by the client.

In light of the above discussion, Applicants submit that Pitkin does not disclose or suggest distributing connection requests based on whether "the received request is for a connection to the application over the network **and** has a characteristic corresponding to the at least one predefined characteristic" as recited in Claims 1, 11 and 21. Accordingly, Applicants submit that each of the recitations of independent Claims 1, 11 and 21 are neither disclosed nor suggested by Pitkin and, therefore, request allowance of Claims 1, 11 and 21. Applicants also submit that the dependent claims are patentable at least per the patentability of their respective base claims.

The Claims Are Not Obvious

Claims 3-8, 13-18 and 23-28 stand rejected as obvious under 35 U.S.C. § 103 in light of Pitkin and United States Patent No. 6,374,300 to Masters (hereinafter "Masters"). Claims 9-10, 19-20 and 29-30 stand rejected as obvious under 35 U.S.C. § 103 in light of Pitkin and United States Patent No. 6,430,622 to Aiken, Jr. *et al.* (hereinafter "Aiken"). Applicants submit that these dependent claims are patentable at least per the patentability of their respective base claims as discussed above as the additional cited art fails to provide the teachings missing from Pitkin.

Applicants also submit that certain of the dependent claims are separately patentable over the cited references. For example, Claims 3, 13 and 23 recite that the characteristic of the requests is a client identification. Applicants submit that, because Pitkin does not disclose or suggest using characteristics of a request other than identification of the server requested, there would be no need to combine Pitkin with Masters as to do so would only provide information that the system of Pitkin would not use. Accordingly, Applicants submit that Claims 3, 13 and 23 are separately patentable for at least these additional reasons.

Conclusion

In light of the above discussion, Applicants submit that the present application is in condition for allowance, which action is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call Applicants' representative at (919) 854-1400.

It is not believed that an extension of time and/or additional fee(s), including fees for net addition of claims, are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned for under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to IBM Deposit Account No. 09-0461.

In re: Callis et al.
Serial No.: 09/693,027
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Respectfully submitted,

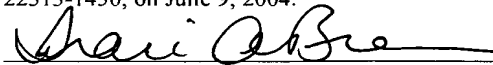


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on June 9, 2004.



Traci A. Brown

Date of Signature: June 9, 2004